Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International, Inc.	)	WC Docket No. 02-189
	)	
Consolidated Application for Authority to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming	)	

COMMENTS OF ONEEIGHTY COMMUNICATIONS, INC.

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Dated: August 1, 2002

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SUMMARY

The Commission cannot approve Qwest's Application for Section 271 authority for Montana based upon the UNE loop rates allowed to go into effect on July 10, 2002 by the Montana Public Service Commission ("Montana PSC"). The Montana PSC has not approved these rates; the new rates were not produced based upon the "bottom up" approach; the "benchmarking" test as applied by Qwest does not produce cost-based rates; and Qwest has not shown that Colorado is comparable to Montana so as to permit use of "benchmarking." In addition, the UNE loop rates in Montana are excessively high in comparison to other states, and are so high that they cause a "price squeeze."

The Qwest Application for Montana should also be denied because Qwest should receive a failing grade concerning its compliance with Checklist Item 1, the interconnection requirements of section 251, and Checklist Item 11, the number portability requirements of section 251 as implemented by the Commission. As explained herein in more detail, Qwest imposes unreasonable interconnection charges and OneEighty and its customers have endured two serious outages caused by Qwest - one as recently as two weeks ago, the other just over a month ago - because of Qwest's complete lack of a working system of internal controls with regard to ported numbers. Moreover, Qwest's Performance Assurance Plan is not clear and is not adequate to deter similar occurrences in the future, or to provide realistic compensation to CLECs, for severe outages such as those experienced by OneEighty.

Review of Qwest's performance will leave the Commission with no other conclusion than that Qwest is failing to meet its obligations in opening its markets to competition. Granting Qwest Section 271 authority at this time is clearly not in the public interest.

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OneEighty Communications, Inc. ("OneEighty") submits these comments concerning the above-captioned Consolidated Application of Qwest Communications International, Inc. for Authority to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming filed July 12, 2002 ("Application").[1] OneEighty Communications, a competitive local exchange carrier, is a leading integrated communications provider of facilities-based telecommunications solutions in the Northwest. OneEighty Communications offers business customers local exchange and long distance services, Internet access, web hosting, and data services, delivering voice and data services over high-speed broadband connections. For the reasons stated herein, the Federal Communications Commission ("Commission") should deny Qwest's Application.

[1] *Comments Requested on the Application By Qwest Communications International, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Montana, Utah, Washington, and Wyoming*, Public Notice, WC Docket No. 02-189, DA 02-1666, released July 12, 2002.

I. THE COMMISSION SHOULD REJECT THE MONTANA UNE LOOP RATES

On July 3, 2002, Qwest filed a revision to its Montana SGAT with the Montana Public Service Commission ("Montana PSC") whereby, *inter alia*, it lowered its UNE loop rates. The Montana PSC decided on July 9, 2002, to allow the new rates to become effective on the date requested, July 10, 2002.[2] Prior to the July 3, 2002 SGAT revision, the UNE loop rates in effect in Montana were those approved by the Montana PSC on October 12, 2001.[3]

The Commission may not approve Qwest's application for Section 271 authority in Montana based upon the UNE loop rates submitted to the Montana PSC on July 3, 2002. First, the Montana PSC has not evaluated current UNE loop rates. Second, while the rates purport to be based upon the "benchmarking" test adopted by the Commission,[4] Qwest has not produced rates based upon the required "bottom up" approach. Third, Qwest has not shown that Colorado is comparable to Montana and thus an appropriate state to use in "benchmarking." Fourth, the Montana UNE loop prices are high in comparison to other states. Finally, the Montana loop prices result in a "price squeeze."

A. The Montana PSC Has Not Evaluated Current Loop Prices

Under the Telecom Act, state commissions may set the rates for unbundled network elements.[5] However, the new Montana UNE loop rates have not been evaluated in a proceeding by the Montana PSC. In fact, the new rates were filed in Montana only nine days before the instant application was filed with this Commission. The Montana PSC has merely allowed the

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[2] Qwest Application at 165; Qwest Application App. A, Tab 28, Declaration of Jerrold L. Thompson (Cost-Based Rates for Unbundled Network Elements and Interconnection in Montana) at ¶ 8 ("Thompson Montana Declaration").

[3] Qwest's wholesale prices in Montana were the subject of a negotiated stipulation among Qwest, Avista (a company later acquired by OneEighty), the Montana Consumer Counsel, Montana Wireless and Touch America. *See Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, Utility Division Docket No. D2000.5.70, Final Report on Qwest's Compliance with the Public Interest Requirement at 14 (Mont. PSC Jul. 5, 2002).

[4] Qwest Application at 159-160.

[5] *See* 47 U.S.C. §§ 252(c)(2), 252(d).

rates to go into effect.[6] Because there has been no reasonable evaluation of Qwest's rates and costs, the Commission should deny Qwest long-distance authority in Montana until the Montana PSC has been able to review the new UNE loop rates and has specifically determined that they are consistent with TELRIC.

B. "Benchmarking" is Not a Tool for ILECs to Use to Set Their Own UNE Rates

Qwest's UNE loop rates that just went into effect in Montana are allegedly justified by the "benchmarking" test adopted by the Commission.[7] In the *Pennsylvania 271 Order*, the Commission used a "benchmarking" test to confirm whether specific UNE rates already set by the Pennsylvania Public Utility Commission were within "the range that a reasonable TELRIC-based ratemaking would produce."[8] The benchmarking test was one tool developed by the Commission to determine whether a Bell Operating Company's ("BOC") UNE rates were in compliance with TELRIC. Qwest transforms that analytical tool into an ILEC rate-setting formula for generating UNE rates in a different state. As Qwest states, "Qwest reduced the 2-wire loop rates in each zone in the state by a uniform percentage to bring the composite statewide average rate down to the level of the Colorado benchmarked composite rate."[9]

The Commission must reject this approach because it is inconsistent with the requirements of the Telecom Act and Commission precedent. First, reducing existing UNE loop rates by "a uniform percentage" does not serve to establish rates based upon a "bottom up" approach based on Montana costs as required by the Act.[10] Second, the Commission used the

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[6] Qwest Application at 165; Qwest Application App. A, Tab 28, Thompson Montana Declaration at ¶ 8.

[7] Qwest Application at 159-160.

[8] *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc.*, and *Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001) ("*Pennsylvania 271 Order*") at ¶ 62.

[9] Qwest Application at 163.

[10] *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services in Georgia and Louisiana,* CC Dkt. No. 02-35,

benchmarking test as an analytical tool. Benchmarking is not a formula ILECs can use to set their own UNE rates, nor is it a methodology an ILEC can use to sidestep state commission evaluation of its rates for compliance with TELRIC, as Qwest is attempting to do here. The new UNE loop rates were developed by Qwest, have not been evaluated by the Montana PSC, and are not based on a "bottom up" approach.

C. Qwest Has Not Shown That Colorado Is An Appropriate State to Use for a Benchmarking Rate Comparison With Montana

The test to determine when benchmarking is appropriate was stated in the *Pennsylvania 271 Order*:

> . . . The Commission has stated that a comparison is permitted when the two states have a common BOC; the two states have geographic similarities; the two states have similar, although not necessarily identical, rate structures for comparison purposes; and the Commission has already found the rates in the comparison state to be reasonable.[11]

Qwest has not laid the predicate for using Colorado UNE rates for benchmarking UNE rates in Montana. There has been no showing of geographic similarity between the two states, which are not contiguous, and there has been no comparison of the rate structures of the two states. Most importantly, the last criteria has not been satisfied because the Commission has never before reviewed the UNE rates in Colorado for compliance with TELRIC. As the Commission previously stated, "Without a finding of TELRIC compliance for the benchmark state, a comparison loses all significance."[12]

D. Montana UNE Loop Prices are High in Comparison to Other States

OneEighty requests that the Commission take official notice of the "Survey of Unbundled Network Element Prices in the United States (Updated July 1, 2002)," which lists all of the UNE

Memorandum Opinion and Order (rel. May 15, 2002) ("*Georgia/Louisiana 271 Order*") at ¶ 287 ("UNEs are priced from the 'bottom up,' that is beginning with a BOC's costs plus a reasonable profit[.]")

11 *Pennsylvania 271 Order* at ¶ 63.

12 *Id.* at ¶ 64.

2-wire rates for the entire United States.[13] The report used only the new UNE rates that became effective July 10, 2002, for Montana. The report demonstrates that as of July 1, 2002, there was a National UNE Weighted Average Rate of $13.43, and that the new Montana UNE weighted average monthly loop rate of $23.72 was not only above the national average, it was the second-highest average monthly loop rate in the United States (second only to West Virginia's rate of $24.58). Prior to Qwest's Montana revised SGAT filing, which only became effective July 10, 2002, the Montana average monthly loop rate was $28.37, the very highest in the United States, and by a significant amount ($3.79 more than the then-second-highest state, West Virginia). Qwest's new SGAT only reduced the prior UNE loop rates by 16.39%. The Montana UNE loop rate is still much too high to permit effective competition[14] and must be reduced before effective competition can take place in Montana.

E. Montana UNE Loop Prices Create a Price Squeeze

Qwest's new deaveraged rates for unbundled loops based on the average Montana rate of $23.72 are $23.10, $23.90, $27.13, and $29.29 for Zones 1, 2, 3, and 4, respectively.[15] Qwest's basic residential rate is $16.73 throughout Montana.[16] This is a classic "price squeeze," in which the monopolist prices its bottleneck facilities so that a would-be competitor who must purchase the monopolist's facilities cannot compete with the monopolist's end-user pricing. This pricing for unbundled loops excludes OneEighty from any of the 47,000 residential lines in Billings and

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[13] *See* Attachment 1. The report is accessible both on the website of the National Regulatory Research Institute (NRRI) http://www.nrri.ohio-state.edu/programs/telecommunications.html and on the website of the West Virginia Public Service Commission at the following address: http://www.cad.state.wv.us/Intro%20to%20Matrix.htm#N_1_.

[14] Qwest has proposed new rates of $23.10, $23.90, $27.13, and $29.29 for Zones 1, 2, 3, and 4, respectively. The port rate is $1.58/month (all zones), and switching is rated at $0.002923 per minute of use (all zones). *See* Thompson Montana Declaration at ¶¶ 16, 20, and 21.

[15] Qwest Montana SGAT, Exhibit A, section 9.2.1.

[16] *Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, Final Report on Qwest's Compliance with the Public Interest Requirement, Utility Division, Docket No. D2000.5.70. (Montana PSC Jul 5, 2002) at 15 ("*Final Report on Qwest's Compliance with the Public Interest Requirement*").

many of the business lines. The Montana PSC acknowledges the "price squeeze dilemma CLECs face."[17] Such a price squeeze invariably precludes competition, and the Commission should not approve rates that are a part of such an anti-competitive scheme.

II. QWEST HAS NOT OPENED ITS MARKET TO COMPETITION IN MONTANA

In its *Final Report on Qwest's Compliance with the Public Interest Requirement*, dated July 5, 2002, one week before Qwest filed this Application, the Montana PSC stated that "the Commission does not believe effective competition exists, or, as noted previously, that it will emerge in the local exchange markets."[18] It said:

> It appears that CLECs face entry barriers to compete with Qwest in the residential market. . . . Absent significant further wholesale rate reductions, modest reductions in Qwest's UNE rates will unlikely improve, other things being equal, competitive entry opportunities for the residential local exchange market. If cost based, however, further wholesale rate reductions will enable efficient competitive entry opportunities for the business local exchange market.[19]

Qwest's untested, yet-to-be-evaluated UNE loop rates that were allowed to go into effect five days after this report do not reach the level of "wholesale rate reductions" that will enable efficient entry opportunities, even in the business local exchange market.

Moreover, the small degree of local competition in Montana shows that Qwest has not opened its markets. Although Qwest claims that it has provided 2,772 stand-alone loops for seven CLECs in Montana,[20] this sum is minuscule in comparison with other states where Section 271 authority was granted for the first time to a BOC. The total number of UNE loops provided by Qwest is clearly relevant to the analysis, as indicated by the Commission's previous comparison of loops provided by an Applicant to the number of loops provided to BOCs that

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17 *Final Report on Qwest's Compliance with the Public Interest Requirement* at 15.
18 *Id.* at 32.
19 *Id.* at 16.
20 Qwest Application at 62.

have already obtained 271 authority.[21] Verizon's first 271 application stated that Verizon was providing approximately 50,000 loops in New York.[22] SBC's first successful 271 application stated that SBC was providing approximately 54,000 loops in Texas.[23] BellSouth's first successful 271 application stated that BellSouth was providing approximately 80,000 loops in Georgia, and 19,000 loops in Louisiana.[24] The mere 2,772 unbundled loops provided by Qwest in Montana shows that the local market is not sufficiently competitive in Montana to justify granting Qwest long-distance authority.

III. QWEST FAILS TO PROVIDE ADEQUATE INTERCONNECTION IN VIOLATION OF CHECKLIST ITEM 1

A. Legal Standard

Section 271(c)(2)(B) of the 1996 Act[25] requires an RBOC to comply with the interconnection requirements of sections 251(c)(2) and 252(d)(1) as implemented by the Commission.[26] Section 251(c)(2)(D) requires ILECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."[27]

B. Qwest's Rates for Interconnection Are Unjust, Unreasonable, and Discriminatory

Qwest's offers collocation as one means for CLECs to obtain interconnection. Qwest's rates for interconnection services such as engineering on CLEC-to-CLEC cabling are unjust,

21 *Pennsylvania 271 Order* at ¶ 77, n.271.
22 *Id.*
23 *Id.*
24 *Georgia/Louisiana 271 Order* at ¶ 218.
25 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of Title 47 of the United States Code) ("1996 Act").
26 47 U.S.C. § 271(c)(2)(B)(i).
27 47 U.S.C. § 251(c)(2)(D).

unreasonable, and discriminatory. In December, 2001, Qwest required OneEighty to agree to two charges of $4,777 for engineering in collocation facilities before allowing OneEighty to put cable between two bays (a "CLEC to CLEC Quote Preparation Fee" of $1, 042.61 and a "Flat Charge (Design Engineering & Installation – No Cables" charge of $3,734.46).[28] The actual work performed by Qwest consisted of approximately fifteen minutes of measuring in the collocation space and noting the results in a spreadsheet. Had OneEighty not agreed to these charges, its ability to maintain service to customers being acquired from another CLEC would have been jeopardized. Qwest did not even install the cable; OneEighty installed the cable. "Engineering labor, per half hour" charges elsewhere in Qwest's Montana's SGAT reflect engineer rates of around $35.00 per half hour, which highlights how extremely unjust and unreasonable the Qwest rate for "CLEC to CLEC" "Flat Charge (Design Engineering & Installation – No Cables" charge of $3,734.46 is.

Additionally, OneEighty was required to make two $3,500 payments to Qwest for simply changing the name on these same collocation facilities. Once the name changes were made, Qwest billed OneEighty for new installation charges on a variety of existing circuits. OneEighty was eventually able to get Qwest to drop the installation charges, but after a tremendous expenditure of time and energy by OneEighty.

The Commission should find that Qwest fails to satisfy Checklist Item 1 because it fails to provide interconnection at rates that are just, reasonable, and nondiscriminatory.

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28 See Montana SGAT, Exhibit A, at section 8.7.

IV. QWEST FAILS TO PROVIDE ADEQUATE NUMBER PORTABILITY IN VIOLATION OF CHECKLIST ITEM 11

A. Legal Standard

Section 271(c)(2)(B) of the 1996 Act requires an RBOC to comply with number portability requirements of section 251(b)(2) as implemented by the Commission.[29] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[30] The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[31]

B. Qwest Lacks a Working System of Internal Controls for Number Portability

As the Commission has noted, "number portability is essential to meaningful competition."[32] Qwest does not have a working system of internal controls in place to manage number portability. A customer in the Qwest region cannot currently "retain, at the same location, existing telecommunications numbers *without impairment of quality, reliability, or convenience* when switching" from Qwest to a CLEC. Qwest's current "system" for managing number portability lacks essential controls, as two incidents OneEighty experienced on June 25, 2002 and July 18, 2002 illustrate.

1. The June 25, 2002 Outage

In November, 2001, Avista Communications of Montana, Inc. ("Avista") was about to become an operating subsidiary of OneEighty. As part of that process, Avista sent an order to

29 47 U.S.C. § 271(c)(2)(B)(xii).

30 *Id.* § 251(b)(2).

31 *Id.* § 153(30).

32 *In the Matter of Telephone Number Portability*, 11 FCC Rcd. 8352, ¶ 28 (1996).

the NANPA administrator, NeuStar, to change the name and revenue accounting office ("RAO") for the NPA/NXX 406/294 from Avista to OneEighty. NeuStar, rather than changing the name and RAO for the NPA/NXX 406/294 as requested, mistakenly processed the order as an order to cancel Avista's use of this NPA/NXX. NeuStar notified Qwest, as the service provider that had ported 406/294 numbers, that Qwest must either assume the 406/294 NPA/NXX, or number changes would have to be done for the customers.

Qwest elected to assume 406/294, which initiated a Local Exchange Routing Guide ("LERG") date of July 13, 2002. Qwest decided that it wanted to assume the 406/294 NPA/NXX ahead of schedule, *i.e.*, prior to the LERG date. On June 24, 2002, the Qwest Account Manager for OneEighty (by this time, Avista had been acquired by OneEighty) called OneEighty and left a voice mail message asking if it was acceptable to OneEighty that Qwest assume the 406/294 NPA/NXX early. OneEighty returned the call the same day, reaching its Account Manager's voice mail, telling her that if Qwest was talking about assuming the entire 406/294 NPA/NXX, there was a major problem, as this was a working OneEighty NPA/NXX. In spite of the scheduled LERG date being July 13, 2002, which OneEighty had not agreed to change, and despite Qwest having been told that OneEighty was using that NPA/NXX and had not asked NeuStar to cancel it, Qwest went ahead and worked the order on Tuesday morning, June 25, 2002, taking the 294 prefix off of all OneEighty's trunk groups. As a result, no incoming calls from outside the OneEighty network would route to OneEighty if the dialed number started with 406/294 or was a QWEST ported number to OneEighty using the 406/294 LRN.

OneEighty's customers are all business customers because, as noted, Qwest's UNE prices preclude any residential competition in Montana. Qwest removed the 294 prefix from OneEighty's trunk groups at the beginning of a business day. OneEighty's customers experienced a major outage, which affected over 6000 business lines and included city and county offices, TV stations, medical clinics, and pharmacies. For approximately three and one-half hours during a weekday morning, these 6000+ business lines were unable to receive incoming calls from anyone other than another customer served by OneEighty. Anyone else trying to call one of these 6000 lines that morning either received a fast busy signal, an intercept recording stating that the call could not be completed as dialed, or an intercept recording stating that the number had been disconnected.

When OneEighty first became aware of the outage, it immediately notified Qwest by issuing a trouble ticket to Qwest as well as by other means considering the seriousness of the situation. OneEighty did not know immediately what was causing the outage. Finally a OneEighty employee - not a Qwest employee - figured out what Qwest might have done to cause the chaos, tracked down a Qwest complex translations employee in Littleton, Colorado, and got the problem fixed.

Needless to say, OneEighty had hundreds of very angry customers. Qwest's unilateral and cavalier action inflicted upon OneEighty a customer relations nightmare that continues. From the customers' perspective, such incidents make it appear that OneEighty's network is unstable. Two customers have already filed complaints with the Montana Public Service Commission against OneEighty over this outage, and OneEighty may see additional complaints filed.

In view of the significant adverse consequences that would certainly befall consumers in the event of error, the fact that Qwest implemented as drastic a change as removing 406/294 from OneEighty's trunks without either confirming with the losing CLEC (OneEighty) that the order to cancel an entire NPA/NXX was correct, or checking for current traffic over OneEighty's trunks prior to assuming OneEighty's 406/294 NPA/NXX (Qwest would have seen that

OneEighty's trunks were still in service and passing a substantial amount of traffic), shows that Qwest lacks adequate internal controls to assure reliability of its portability systems. The fact that it rushed to do so prior to the scheduled LERG date exacerbated the problem. Additionally, it is most troubling that Qwest removed the 294 prefix from OneEighty's trunk groups before addressing the critical elements that are supposed to be addressed prior to acquiring any working prefix. Qwest never checked to see whether or not there were E911 entries, LIDB entries, or Directory Assistance listings that needed to be changed from OneEighty to Qwest. For an ILEC to have skipped not just one, but <u>all</u> of those checkpoints, and simply re-route an entire prefix to a disconnect recording, is an enormous, baffling oversight. If Qwest had attended to any one of those items before deleting the prefix from OneEighty's working trunk groups, the error may have been avoided. Qwest's actions on June 25, 2002 caused untold harm to OneEighty and the business customers that it serves (with their 6000+ lines) and showed that Qwest does not have adequate internal controls in place to assure reliability of its portability systems.

2. The July 18, 2002 Outage

OneEighty and its customers experienced another major outage caused by Qwest on July 18, 2002, less than two weeks ago, and was caused by Qwest's failure to recall all of its actions that caused the June 25, 2002 outage.

Qwest had assured OneEighty that it had reversed all paperwork it had issued and actions it had taken that had caused the June 25, 2002 outage and had permanently resolved the problem. Qwest's Service Manager of Wholesale Customer Service Operation advised OneEighty by letter dated June 28, 2002, that as a result of the outage on June 25, 2002, "… Qwest has canceled all associated orders for the 406 294 code change as well as orders for the code change associated with 406 384. All routing has been returned to the original configuration."

Despite Qwest's assurances, another outage occurred on July 18, 2002, again affecting OneEighty's 406/294 customer phone numbers: these OneEighty customers, once again, were not able to receive incoming calls from any number outside the 406/294 NPA/NXX, and callers from outside the 406/294 prefix heard a recording that the number called had been disconnected. As with the previous June 25, 2002 outage, the outage of July 18, 2002 lasted throughout the busiest time of the day for OneEighty's business customers, beginning before 7:30 a.m. (when customers began to complain), and lasting until around 3:00 p.m. Since this was a repeat of a recent, serious problem, OneEighty expected to be contacted by someone from Qwest at the vice-presidential level, but that did not occur.

OneEighty notified Qwest's Service Manager of the July 18th outage immediately. The cause of the outage this time was determined to be a Qwest-initiated change in the NPAC database showing all 406/294 numbers as now having the LRN of 406 651-1111 (a Qwest prefix) and the company owner as SPID (OCN) 9636, Qwest. Qwest was able to fix only a part of the problem: Qwest notified OneEighty at 9:45 a.m. that the triggers in the Billings West & Main C.O. had been removed so that all calls originating from those offices to 294 numbers would route to OneEighty correctly, but long distance calls to OneEighty 406/294 customers would still fail. Qwest advised OneEighty that Qwest could not make changes on the 406/294 file because it was in "Partially Failed" status. Finally, around 1:00 p.m., a NeuStar representative, with the help of OneEighty's Director of Network Operations, was able to override the existing file in partial failure and to begin the process of changing 406/294 codes back to OneEighty. Most numbers were restored by 3:00 p.m., but the final range was not completed until the following morning (July 19, 2002).

OneEighty is very disturbed that Qwest allowed the second outage to occur, knowing how its actions had harmed OneEighty and so many consumers on June 25, 2002. Qwest had assured OneEighty that the problem was solved, but having no working system of internal controls in place, the problem was not in fact solved. In fact, the second outage was caused because Qwest continued to process the initial NeuStar direction. OneEighty is also disturbed that even though Qwest participated in an effort to fix what it had caused, it could not solve the entire problem and had to call on help and intervention from NeuStar to resolve it.

Having just experienced two major outages in less than one month's time, OneEighty has good reason to believe that it is quite possible that Qwest still has not taken all action necessary to ensure that Qwest employees do not again issue orders to make Qwest the holder of OneEighty's 406/294 NPA/NXX. Because Qwest obviously does not have in place a system of internal controls to manage number portability, OneEighty fears that it is only a matter of time before its business customers are out of service again in the middle of a business day.

3. Qwest Has Shown a Lack of Controls Over Translation Procedures

These recent major outages are not the first time that Qwest has shown lack of internal controls. One of the first incidents OneEighty (then Avista) experienced evidencing Qwest's lack of controls over its translation procedures occurred in November 2000.

As the Commission is aware, under the North American Numbering Plan, every telephone number takes the form (NPA) NXX-XXXX, where NPA, or "numbering plan area," represents the three digit area code, and NXX represents the next three digits of the telephone number, often called the "prefix." Qwest's practice was to send Avista seven digit translations over Avista's trunks (*i.e.*, the telephone number without the NPA). Avista's switch was therefore programmed to add three digits (the NPA) to each group of seven digits sent by Qwest. One day (again in the middle of a business day, the worst possible time for Avista's business customers to experience an outage), Qwest began sending ten digit translations on Avista's trunks - without telling Avista that it was changing its translations procedures. Since Avista did not know that Qwest had begun sending ten digit translations, Avista continued to add on the three digit NPA. Since the translations are read from left to right, the NPA/NXX now appeared as "406/406." Qwest's failure to notify Avista that it had changed its basic routing procedures stopped all call routing for inbound calls for an extended period of time. All Qwest would have had to do to prevent this outage experienced by OneEighty customers was to have notified OneEighty in advance of the change in its translation procedures, but no Qwest working system of internal controls was in place to ensure that such notification would occur.

OneEighty described the foregoing instances to the Commission by filing Comments and Reply Comments in Qwest's first Section 271 Application proceeding covering the states of Colorado, Idaho, Iowa, Nebraska, and North Dakota,[33] since these incidents evidence Qwest's lack of internal controls regarding number portability, and that defect affects all states served by Qwest. Qwest, responding to OneEighty's Comments in that proceeding, claimed that NeuStar was completely at fault in the June 25, 2002 outage. Further, Qwest referred to the June 25, 2002 outage, which affected 6000+ business lines in the middle of a business day, as an "isolated and trivial" incident.[34] However, Qwest did not contradict or address OneEighty's claim that the first outage on June 25th showed a lack of internal controls to implement number portability. The second outage on July 18th confirms Qwest's lack of internal controls, and, obviously, also belies the statement that the first outage was an "isolated incident." Qwest's description of the June 25th outage suffered by OneEighty as "trivial" is stunningly inaccurate used as a description of the outage, but does regrettably serve as a revealing description of the small importance Qwest assigns to having a working system of internal controls in place to implement number portability

[33] *Comments Requested on the Application By Qwest Communications International, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Nebraska, and North Dakota*, Public Notice, WC Docket No. 02-148, DA 02-1390, released June 13, 2002 ("*Qwest 271 Application for Colorado, Idaho, Iowa, Nebraska, and North Dakota*").

and/or NPA assignments that are necessary preconditions to it having opened its local markets to competition as required by Section 271. Qwest should not be found to meet the checklist item for number portability until it shows it has a working system of internal controls for ported numbers and translation procedures in place that includes some minimal safeguards against making errors of the magnitude OneEighty has experienced. The fact that OneEighty has experienced two major outages caused by Qwest within the last month shows that Qwest still has no working system of internal controls for ported number transactions in place.

C. Qwest's Performance Assurance Plans ("PAPs")

The FCC has identified five important characteristics of plans aimed at ensuring that market-opening performance will be maintained after securing section 271 entry:[35]

- Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- Clearly articulated, pre-determined measures and standards that encompass a comprehensive range of carrier-to-carrier performance;
- A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- Reasonable assurances that the reported data are accurate.

Qwest's Performance Assurance Plans ("PAP") should be revised to clarify the penalty for extensive network outages causing the degree of harm experienced by OneEighty. It is not entirely clear how Qwest's actions of June 25, 2002 and July 18, 2002 would be treated under Qwest's PAPs. For example, the highest Tier-1 "per occurrence payment" in Montana is

[34] *Qwest 271 Application for Colorado, Idaho, Iowa, Nebraska, and North Dakota*, Qwest Reply Comments at 84.

[35] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, ¶ 433 (1999) ("*New York Order*").

$150.00 in Month 1, and only $250.00 in Month 2. If "occurrence" as applied to the June 25th or July 18th outages means per line, that may be reasonable; it would allow the CLEC to compensate its business customers somewhat for the loss of almost a day's business and OneEighty's expenses in notifying customers that in fact their telephone numbers had not been disconnected. If "occurrence" means per global outage, or $150.00/$250.00 total for an outage several hours long for 6000 business lines and the resulting bedlam, it is grossly inadequate and should be changed. In any event, the PAP should "clearly articulate" what sections are applicable with regard to such outages, and the payment set at a level that would actually "sanction poor performance." One hundred fifty dollars for the harm caused to OneEighty by these outages would be tantamount to no sanction at all. Qwest's Application should be denied at this time because its PAP is seriously deficient.

V. CONCLUSION

For the foregoing reasons, OneEighty Communications, Inc. urges the Commission to deny Qwest's Application for Provision of In-Region InterLATA Services in Montana.

Respectfully submitted,

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ATTACHMENT 1

STATE LOOP AND UNE-P RATES SORTED BY WEIGHTED AVERAGE RATES

State	Average Monthly Loop Rates	State	Average Monthly UNE-P Rates
West Virginia	$24.58	West Virginia	$33.42
Montana	$23.72	Wyoming	$29.72
Wyoming	$23.39	New Hampshire	$28.13
Arizona	$21.98	South Dakota	$26.40
Mississippi	$21.26	Arizona	$26.39
South Dakota	$21.09	Montana	$25.99
New Mexico	$20.50	Mississippi	$25.75
Idaho	$20.42	Idaho	$23.49
Nevada	$19.83	Nevada	$23.07
Alabama	$19.04	New Mexico	$22.99
Kentucky	$18.41	Connecticut	$22.95
New Hampshire	$17.99	Alabama	$22.81
Minnesota	$17.87	Louisiana	$21.96
North Dakota	$17.79	Kentucky	$21.10
South Carolina	$17.60	Minnesota	$20.76
Nebraska	$17.51	Nebraska	$20.67
Louisiana	$17.31	South Carolina	$20.30
Georgia	$16.51	Massachusetts	$20.28
Iowa	$16.47	Maryland	$20.20
Maine	$16.19	Georgia	$19.99
Utah	$16.13	Oklahoma	$19.95
North Carolina	$15.88	North Carolina	$19.77
Colorado	$15.85	North Dakota	$19.75
Florida	$15.81	Colorado	$19.71
Missouri	$15.19	Utah	$19.69
Oregon	$15.00	Missouri	$19.49
Massachusetts	$14.98	Vermont	$19.44
Tennessee	$14.92	Texas	$19.17
Oklahoma	$14.84	Maine	$18.81
Washington	$14.62	Iowa	$18.31
Maryland	$14.50	Pennsylvania	$18.19
Vermont	$14.41	Wisconsin	$18.06
Texas	$14.15	Virginia	$18.00
Kansas	$14.04	Florida	$17.98
Rhode Island	$13.93	Tennessee	$17.61
Pennsylvania	$13.81	Oregon	$17.59
Virginia	$13.60	Kansas	$17.49
US Average	**$13.43**	**US Average**	**$17.48**
Arkansas	$13.09	Washington	$17.16
Connecticut	$12.49	Rhode Island	$17.07
Delaware	$12.05	Delaware	$17.06
New York	$11.49	Indiana	$16.98
Wisconsin	$10.90	Arkansas	$16.54
D.C.	$10.81	D.C.	$15.36
Michigan	$10.15	New York	$15.19
California	$9.93	Ohio	$14.87
Illinois	$9.81	Illinois	$14.82
New Jersey	$9.52	Michigan	$13.87
Indiana	$8.20	New Jersey	$12.89
Ohio	$7.01	California	$11.58